



## STATE OF WISCONSIN Division of Hearings and Appeals

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In the Matter of

Sawyer County Human Services Department / Northern Income Maintenance Consortium,  
Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 206101

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Pursuant to a petition filed by the Northern Income Maintenance Consortium on August 29, 2022, under Wis. Admin. Code §HA 3.03 and 7 C.F.R. § 273.16, to review its decision to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of one year, an administrative disqualification hearing was scheduled to occur on October 18, 2022. At that time, Respondent and his spouse, ██████████, who is the respondent in a related FoodShare administrative disqualification hearing (DHA Case No. FOF-206099), stated that Respondent would be serving as her representative at hearing. All three parties agreed that it would be appropriate for ██████████ and ██████████ hearings to be held at the same time. At Respondent's request, both hearings were then rescheduled to allow the agency to mail a copy of proposed exhibits for ██████████ case to ██████████ in his capacity as her chosen representative.

The hearing was rescheduled for November 16, 2022. On that date, the administrative law judge was unable to commence the hearing at the scheduled start time due to another hearing requiring more time than anticipated and Respondent stated his preference to reschedule the matter to a different date rather than to hold the hearing at a later time on November 16, 2022. The hearing was then scheduled for and held on Tuesday, November 29, 2022 at 09:00 AM by teleconference initiated from Madison, Wisconsin.

The hearing record was held open until December 13, 2022 to allow the parties to submit additional exhibits and was then held open until December 27, 2022 to allow the parties to file replies to one another's post-hearing exhibits. Prior to the deadline, the agency submitted five audio recordings as additional exhibits. Those exhibits have been marked as Petitioner's Exhibits 13A – 13E. Prior to the deadline, Respondent submitted an audio recording which has been marked as Respondent's Exhibit 1 and the following documents: a September 15, 2020 letter addressed to ██████████ from the Wisconsin Department of Corrections; five non-contiguous pages relevant to a CHIPS case filed in Lincoln County; six pages of handwritten notes; and ten pages of carbon copies of checks. Those documents have been marked together as Petitioner's Exhibit 2. The agency filed a reply to Respondent's post-hearing submission on December 20, 2022. Respondent did not file a response to the agency's post-hearing submission.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Sawyer County Human Services Department / Northern Income Maintenance Consortium  
10610 Main Street  
PO Box 730  
Hayward, WI 54843  
By: Stacey Kind

Respondent:

[REDACTED]  
[REDACTED]  
[REDACTED]

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # [REDACTED]) is a resident of Lincoln County. He is married to [REDACTED].
2. Respondent and [REDACTED] (nee [REDACTED]) lived together in the southwestern part of the state from approximately March 2020 through June 2020. On an unspecified date in approximately July 2020, they moved together to a rental property located at [REDACTED] Wisconsin which they continued to rent through at least November 2022. (Respondent's Testimony)
3. From at least April 2020 through May 2022, Respondent and [REDACTED] received benefits on separate FS cases. (Petitioner's Ex. 7).
4. In April 2020, Respondent filed an application by telephone for FS and reported that he lived at [REDACTED] and that no one else resided in his home. (Petitioner's Exs. 7 and 8).
5. In August 2020, Respondent reported to the agency that he had moved to [REDACTED] in [REDACTED] as of July 2020 and that he and his friend, [REDACTED], were renting to own that property from his mother. He also reported that he purchased and prepared food separately from [REDACTED]. (Petitioner's Ex. 7; case notes 8/10/20 and 8/18/2020 and Ex. 12).
6. On September 22, 2020, Respondent and [REDACTED] were married. (Respondent's Testimony)
7. Respondent was incarcerated from approximately December 12, 2020 through February 28, 2021 (Petitioner's Exhibit 7; case notes dated 12/15/20 and 4/22/21).
8. On April 19, 2021, [REDACTED] filed a FS renewal for her own FS case. On the renewal form that she submitted, she updated her marital status to "married" and listed her address as [REDACTED] in [REDACTED], Wisconsin. She did not however list any other people in her home. On April 23, 2021, an agency representative contacted [REDACTED] by telephone to seek clarification regarding her household

composition. [REDACTED] reported that she was not living with her spouse. (See DHA Case No. FOF-206099, Petitioner's Exs. 6 and 8.).

9. On April 22, 2021, three days after [REDACTED] filed a FS renewal and reported that she was married to Respondent but living alone at [REDACTED], Wisconsin, Respondent completed a FS telephone interview and reported that he was living alone at [REDACTED]. He did not list any other people in his home and did not notify the agency that he was married. On April 23, 2021, the agency sent Respondent a written summary of the information he provided during the telephone interview and instructed him to contact the agency if the summary contained any incorrect information. Consistent with his telephone interview, the summary listed his marital status as divorced. (Petitioner's Exs. 6, 7, and 8).
10. For an unknown period of time prior to the date of the hearing in this matter, a no contact order was in place that prohibited Respondent and [REDACTED] from having contact. (Respondent's Ex. 2, labeled "Document 81"; Petitioner's Ex. 13D--audio recording of phone call from Respondent's Probation Officer, [REDACTED]; and Respondent's Testimony).
11. Respondent was incarcerated from approximately October 12, 2021 and was released on February 28, 2022. (Petitioner's Ex. 7; case notes dated 11/15/21, and 3/1/22).
12. On March 1, 2022, Respondent reapplied for FS and completed a FS telephone interview. He again did not list any other people in his home and again did not notify the agency that he was married. On March 2, 2022, the agency sent Respondent a written summary of the information he provided during the telephone interview and instructed him to contact the agency if the summary contained any incorrect information. Consistent with his telephone interview, the summary listed his marital status as divorced. (Petitioner's Exs. 6, 7, and 8)
13. On April 27, 2022, the Lincoln County Department of Child Protective Services reported to the agency that Respondent was married and residing with his spouse. Because, at that time, Respondent and [REDACTED] had FS cases open in their own names, the agency sent them each a request for verification of household composition and subsequently initiated a fraud investigation. (Petitioner's Exs. 6 and 7 and Agency Representative Kind's Testimony)
14. On August 2, 2022, the agency mailed Respondent correspondence informing him that the agency had concluded that he failed to report his marriage when he completed a FS application on April 22, 2021 and again on March 1, 2022.
15. On August 31, 2022, the agency issued an Administrative Disqualification Hearing Notice alleging that Respondent intentionally withheld information by failing to notify the agency that he had, in September 2020, married [REDACTED], that the agency was therefore seeking to impose a one-year penalty against Respondent, and that Respondent received benefits he was not eligible to receive from November 2020 through July 2022 as a result of withholding information regarding his marriage.
16. Respondent appeared at the hearing.

## DISCUSSION

An intentional program violation (IPV) of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

*FoodShare Wisconsin Handbook*, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An individual who commits an IPV can be disqualified from participation in the FoodShare (FS) program. The length of the disqualification period depends, in part, on the nature of the IPV. See 7 C.F.R. § 273.16(b). Generally, an individual will be disqualified for twelve months after committing her or his first IPV. See 7 C.F.R. § 273.16(b)(1)(i). *The petitioner/agency can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household.* Although other adult family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

An IPV can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing. *FoodShare Wisconsin Handbook* § 3.14.1. To prevail at an administrative disqualification hearing, the agency seeking to establish that a FS recipient has committed an IPV must prove the following two separate elements through the presentation of clear and convincing evidence: (1) the recipient committed a program violation; and (2) the recipient intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

*Kuehn*, 11 Wis.2d at 26.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong) gen. ed., 4<sup>th</sup> ed. 1992.

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. *See, John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

The agency here contended that Respondent committed an intentional program violation by failing to timely report his marriage to [REDACTED] when he requested FS benefits on April 22, 2021 and again in March 1, 2022 and that by doing so, he received more benefits than he was eligible to receive. For the reasons set forth below, I concur.

The agency produced copies of case comments entered into the agency's database by the workers who spoke with Respondent on those dates as well as copies of written summaries sent to him on April 23, 2021 and March 2, 2022 respectively that documented the information he had provided by telephone. Those case comments and case summaries together indicate that Respondent did not report his marriage to the agency when requesting FS benefits in 2021 and 2022 and that he reported residing alone at [REDACTED] Wisconsin.

In response to the agency's contention that he failed to report his marriage during March 2021 and April 2022 application interviews, Respondent testified that he had sent the agency a marriage certificate though he did not say when he did so. The agency representative acknowledged that a marriage certificate was received but asserted that it was not received until May 2022, which was after the agency's fraud investigation had begun. Neither party offered any documentation to substantiate their testimony regarding the date the marriage certificate was sent or received. Respondent did not offer an explanation for why his marital status was identified as "divorced" on the case summaries that were based on telephone interviews he completed in April 2021 and March 2022.

Respondent also asserted that [REDACTED] and he stopped living together in November 2020, not because they were divorced or separated, but because either the Department of Corrections or Lincoln County Department of Social Services ordered them to have no contact with one another. Neither party offered documentation to verify the dates of the no contact order but there seems to be no dispute that during at least part of the time between Respondent's marriage in September 2020 and the date of the hearing in this matter, a no contact order was in place. Respondent argued that the no contact order was evidence that they had in fact had no contact.

The agency pointed out that the existence of a no contact order does not mean that there was in fact no contact. I concur and note that there is evidence in the record that Respondent and [REDACTED] continued to have contact with one another after November 2020. For example, Joshua Erickson, an investigator retained by the agency to investigate Respondent's household composition, testified that he interviewed Respondent in June 2022 at which time Respondent indicated that he had seen [REDACTED] four months prior. A recording of that interview was offered as an exhibit and reflected the accuracy of Mr. Erickson's testimony in that regard. And, Respondent himself offered documentation that references an altercation between [REDACTED] and him in October 2021.

Respondent also testified that the Department of Corrections ordered [REDACTED] to spend no more than 50% of her time in either Crawford County or Lincoln County. He did not offer documentation to establish the dates that the order was in place and did not identify particular dates that she lived in either location. Although Respondent offered a copy of select pages of court documents filed in a CHIPS case concerning [REDACTED] son that indicate she reported to the Department of Social Services that she was residing outside of [REDACTED] Wisconsin from August 2021 through December 2021, the question here is whether Respondent committed an intentional program violation when filing applications for FS in April 2021 or March 2022. Moreover, as the agency rightly pointed out, the CHIPS-related documents are of limited probative value since there are several pages missing.

The agency also offered copies of [REDACTED] April 19, 2021 on-line renewal, which was filed just three days prior to Respondent filing an application on his own FS case. Unlike Respondent, [REDACTED] reported to the agency that she was married. But, like Respondent, she reported that she lived at [REDACTED] in [REDACTED], Wisconsin and that she lived alone.

Plainly, Respondent and [REDACTED] could not have both lived at [REDACTED], a one family home, and both lived alone at the same time. Respondent intimated that [REDACTED] may have reported her address as [REDACTED] because she has a rental agreement there but argued that the existence of a rental agreement does not mean she was living there at that time. The evidence in the record however indicates that it is a month to month tenancy so [REDACTED] would have no ongoing contractual obligation. Moreover, it is not clear why she would continue paying rent since 2020, as Respondent claimed she has, if she no longer lives at [REDACTED] particularly if Respondent is currently involved with another woman, as he also contended at hearing. It seems a more reasonable inference that [REDACTED] reported that she lived at [REDACTED] in April 2021 because she did, in fact, live there at that time (which does not rule out the possibility that she has spent significant time in Crawford County over the past several years) and that she reported that she lived alone to avoid any consequences of violating the no-contact order that Respondent referenced at hearing.

Finally, I want to clarify that though Respondent and the agency both spent a good deal of time arguing about whether his mother who owns the rental property at [REDACTED], Wisconsin charges them \$750 or \$1,500 per month, I did not find that question to be relevant to a determination of whether Respondent intentionally withheld information from the agency by failing to report his marriage to [REDACTED]. I also note that I did not give any weight to the audio recordings offered by the agency with the exception of the recording of Joshua Erickson's interview with Respondent. That recording was considered because both Respondent and Mr. Erickson were at the hearing and available to offer sworn testimony and were both available for cross-examination. Similarly, I gave no weight to a recording that Respondent made of a telephone conversation he had with his mother the night prior to the hearing in part because his mother was not present at the hearing but more so because the content of the phone call, which consisted almost entirely of Respondent talking and asking his mother leading questions, was simply not persuasive evidence.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules by withholding information regarding his marriage to [REDACTED] (and his household composition) when he completed FS applications in April 2021 and March 2022, and that this violation was the first such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

### **CONCLUSIONS OF LAW**

1. The respondent misrepresented, concealed or withheld facts by failing to report that he was residing with his spouse when completing FS applications in April 2021 and March 2022; he thus committed an intentional program violation as that term is defined in 7 C.F.R. § 273.16(c)(1).
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

**NOW, THEREFORE,** it is

**ORDERED**

That the agency's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

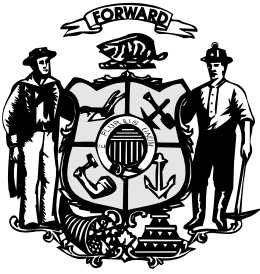
Given under my hand at the City of Madison,  
Wisconsin, this 10th day of January, 2023



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\sTeresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals

c: Northern Consortium - email  
Public Assistance Collection Section - email  
Division of Medicaid Services - email  
Stacey Kind - email



## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 10, 2023.

Sawyer County Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[REDACTED]